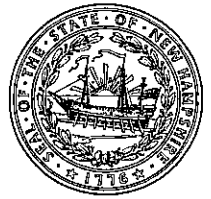




The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

February 10, 2009

The Honorable Judith T. Spang, Chairman
House Resources, Recreation and Development Committee
Legislative Office Building, Room 305
Concord, New Hampshire 03301

Re: HB 473-FN, relative to water treatment plants and penalties for safe drinking water violations

Dear Chairman Spang:

Thank you for the opportunity to testify in support of HB 473-FN, relative to water treatment plants and penalties for safe drinking water violations. The bill proposes to amend RSA 332-E, Water Treatment Plant Operators and Water Distribution System Personnel (sections 1 - 4), and RSA 485, the New Hampshire Safe Drinking Water Act (sections 5 - 9), as follows:

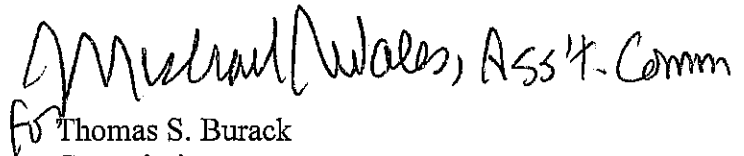
- §1: Amends the definition of "Department" to bring it into alignment with how the term is defined in all other statutes implemented by DES.
- §2: (a) Moves the existing requirement for a public water treatment plant or distribution system ("public water works") to be operated by a certified operator from RSA 332-E:10, Penalty, to RSA 332-E:3, Regulation of Water Treatment and Distribution, where it logically belongs; and
(b) Eliminates the option for DES to exempt public water works serving fewer than 250 persons from the requirement to have a certified operator, as this exemption has never been used and DES cannot envision a situation where an exemption would be appropriate due to the availability of the I-A classification.
- §3: Transfers the authority to suspend or revoke an operator's certification from the advisory committee created by RSA 332-E:2 to DES. Under existing RSA 332-E:3, DES establishes the process, criteria, and conditions for certification and issues certifications. It thus is more logical for DES to also have the authority to suspend or revoke the certifications, rather than to have an advisory committee hold that authority. This issue was flagged for legislative action by the Joint Legislative Committee on Administrative Rules (JLCAR) when DES initiated the readoption of the rules for this program in the fall of 2008.
- §4: Deletes the language from RSA 332-E:10 that was moved to RSA 332-E:3 by §2.
- §5: Amends RSA 485:17, to clarify it and to consolidate the criminal penalty provisions of RSA 485:19 into it as paragraph II. The provisions are also revised so as to distinguish between actions that are taken negligently or recklessly from actions that are taken knowingly, and to set different levels of penalties accordingly.

- §6: Clarifies the authority in RSA 485:18 for municipal officials to remove harmful materials or substances from a public water supply.
- §7: Deletes, from RSA 485:20 (Injunctions), the reference to RSA 485:19, which is repealed by §9 due to its incorporation into RSA 485:17.
- §8: Adjusts the criminal penalty authority specified in RSA 485:58 to reflect the distinction between violations committed recklessly and those committed knowingly or purposefully, and adds authority for a court to order the defendant to pay the costs of remediation.
- §9: Repeals RSA 485:19, which is incorporated into RSA 485:17 under §5.

DES believes that the proposed amendments will bring clarity to the affected statutes, and enhance not only the public's understanding of the seriousness of polluting water supplies, but also the Department's ability to respond quickly to egregious water system operation violations, the Attorney General's ability to appropriately prosecute polluters, and the ability of the courts to allocate remediation costs to those responsible for the pollution.

Thank you again for the opportunity to comment in support of this bill. If you have any questions, please call me at 271-3449 or Gretchen Hamel, Legal Unit Administrator, at 271-3137.

Sincerely,


for Thomas S. Burack
Commissioner

cc: Representative Kappler
Representative C. Christensen
K. Allen Brooks, Chief, AGO-Environmental Protection Bureau